



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

REDACTED VERSION*

Matter Of: Alliant Techsystems, Inc.; Olin Corporation

File: B-260215.4; B-260215.5

Date: August 4, 1995

John S. Pachter, Esq., Jonathan D. Shaffer, Esq., and Christina M. Pirrello, Esq., Smith, Pachter, McWhorter & D'Ambrosio, for Alliant Techsystems, Inc.; John S. Vento, Esq., Trenam, Kemker, Scharf, Barkin, Frye, O'Neill & Mullis, for Olin Corporation.

Thomas J. Madden, Esq., John J. Pavlick, Jr., Esq., Charles R. Marvin, Jr., Esq., and David W. Goewey, Esq., Venable, Baetjer, Howard & Civiletti, for Martin Marietta Ordnance Systems, Inc., an interested party.

Jeffrey I. Kessler, Esq., and Bradley J. Crosson, Esq., Department of the Army, for the agency.

Guy R. Pietrovito, Esq., and James A. Spangenberg, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Meaningful discussions were not conducted, where the protester was not informed of evaluated weaknesses in its proposal relating to the firm's [DELETED] and to its proposed subcontractor's past performance, which were significant factors impacting the selection of another firm for award.
2. Where an agency advised the protester during discussions that its prices were unrealistic but declined to state whether they were too high or too low, the discussions, considered as a whole, were nevertheless meaningful and not misleading where the agency otherwise indicated that the prices were considered too low by noting to the protester that its prices apparently did not include various elements of cost.
3. In a best value procurement, in which technical factors were stated to be more important than price, the awardee's higher-rated proposal was reasonably determined to outweigh the protester's price advantage, where the agency

*The decision issued August 4, 1995, contained confidential or source selection sensitive information, and was subject to a General Accounting Office protective order. This version of the decision has been redacted. Deletions in text are indicated by "[DELETED]."

064459/1.550.54

reasonably determined that the protester's price was unrealistically low.

DECISION

Alliant Techsystems, Inc. and Olin Corporation protest the award of a contract to Martin Marietta Ordnance Systems, Inc. under request for proposals (RFP) No. DAAA09-94-R-0173, issued by U.S. Army Armament, Munitions and Chemical Command, for the HYDRA-70 rocket system. Alliant and Olin challenge the Army's evaluation of the offerors' proposals, conduct of discussions, source selection, and deletion of one contract line item after discussions.

We sustain Alliant's protest because the Army failed to conduct meaningful discussions with Alliant. We deny Olin's protest.

The RFP contemplated the award of a fixed-price contract for various types and quantities of HYDRA-70 rockets and warheads, and for engineering services. The HYDRA-70 rocket system provides the Army with a 2.75-inch air-to-ground rocket that can be mounted on fixed-wing and rotary aircraft. The prior total system contract was awarded to BEI Defense Systems Co, which declined to accept further options.

The RFP provided for award on a best value basis and identified the following evaluation factors, subfactors, and subfactor elements:

1. MISSION

a. Management

- i. Quality production capability
- ii. Personnel expertise
- iii. Risk management
- iv. Safety management
- v. Small business and disadvantaged

business subcontracting

b. Technical

- i. Production engineering
- ii. Pre-production evaluation
- iii. Engineering services

2. PERFORMANCE RISK

a. Experience

- i. Production experience
- ii. Explosives experience
- iii. Subcontract experience
- iv. Electrical experience
- v. Pre-production evaluation experience
- vi. Configuration management experience
- vii. Failure analysis experience

b. Past performance

- i. Prior contracts
- ii. Default contracts
- iii. New corporates
- iv. Corporate continuity

3. COST

The mission factor was stated to be more important than the performance risk factor, which was stated to be more important than cost. Within the mission factor, the management subfactor was said to be more important than the technical subfactor. Within the management and technical subfactors, the quality production capability and production engineering elements were identified as being significantly more important than any other elements. Offerors were informed that proposed prices would be evaluated for reasonableness and realism.

Detailed proposal preparation instructions were provided that informed offerors of the information required for each factor, subfactor, and subfactor element. Among other things, offerors were to describe their proposed organization or teaming approach to accomplishing the contract work, and to provide specific experience information for themselves and all proposed subcontractors. Offerors were required to include with their proposals the "written consent of the proposed significant subcontractors to allow the [g]overnment to discuss the subcontractor's past performance evaluation with the offeror during negotiations."

Price proposals were required to provide sufficient cost information to allow the agency to perform a cost realism evaluation; in this regard, offerors were required to provide a consolidated bill of materials, cost breakdowns for direct costs and subcontracts, and the basis for their estimated direct/indirect rates. Offerors were also informed that "for material items and/or subcontracts totaling \$10,000,000 or more, [they were to] provide [their] basis for pricing in accordance with Table 15-2

of [Federal Acquisition Regulation (FAR) § 15.804-6]"; this table also requires offerors to identify the relevant cost elements that comprise proposed prices.

Four firms, including Martin Marietta, Alliant, and Olin, submitted offers by the closing date for receipt of proposals. The agency's evaluation of proposals under the mission and past performance evaluation factors resulted in color code ratings and narrative explanations. Proposals were evaluated under the mission factor as either "blue," reflecting that the offer exceeded the solicitation requirements; "green," the offer fully met the requirements; "yellow," the offer "addresses requirements with intent to meet but requires discussion/clarification and/or minor correction"; or "red," the offer does not meet solicitation requirements. Proposals were evaluated under the past performance factor as either "green," indicating low performance risk; "yellow," indicating moderate performance risk; or "red," indicating high performance risk.

All offers were determined to be within the competitive range. Face-to-face discussions were conducted with each offeror, at the conclusion of which each offeror was provided with a written transcript of the agency's questions. Best and final offers (BAFO) were requested and evaluated as follows:

	Martin Marietta	Alliant	Olin
Mission	[DELETED]	[DELETED]	[DELETED]
Performance Risk	[DELETED]	[DELETED]	[DELETED]
Proposed Price	\$(DELETED) ¹	\$(DELETED)	\$(DELETED)

The agency's source selection review board (SSRB) prepared an evaluation report for the source selection authority (SSA), which detailed the strengths, weaknesses, and risks presented by each offeror's proposal. The SSRB determined that although Alliant's, Olin's, and Martin Marietta's BAFOs were all green/fully acceptable overall, Martin Marietta's BAFO was slightly higher rated than those of Alliant and Olin. Specifically, the SSRB determined that only Martin Marietta's BAFO was fully acceptable under the [DELETED]. In this regard, Martin Marietta's BAFO was rated [DELETED] for [DELETED]; Alliant's BAFO, on the other hand, was rated [DELETED] under [DELETED] and [DELETED] under [DELETED], while Olin's BAFO was rated [DELETED] under [DELETED] and [DELETED] under [DELETED]. Martin Marietta's offer was also considered to be higher rated than Alliant's and Olin's offers under the [DELETED] evaluation factor, although all three firms were rated [DELETED] overall for this factor. In this regard, Alliant's offer received [DELETED] ratings for the [DELETED] elements of the [DELETED] factor, primarily

¹"M" equals a million.

because of the past performance of Alliant's [DELETED] subcontractor--BEI--under the prior HYDRA-70 rocket contract.

The SSRB also evaluated the reasonableness and realism of the offerors' proposed prices. Martin Marietta, Alliant, and Olin each [DELETED] their proposed prices in their BAFOs from those initially proposed--Martin Marietta by \$[DELETED] million; Alliant by \$[DELETED] million; and Olin by \$[DELETED] million. The SSRB concluded that Martin Marietta's price, which was [DELETED], was [DELETED] and that Alliant's price was [DELETED]. The SSRB found, however, that Olin had not documented and supported the [DELETED] in its proposed BAFO price, and that Olin's proposed price, which was determined to be more than [DELETED] percent below the government's calculated cost realism position for Olin's proposal, was unrealistically low.

The SSA adopted the SSRB's findings and determined that Martin Marietta's BAFO represented the best value to the government, although it was higher priced than Alliant's and Olin's BAFOs. Specifically, with respect to Alliant's BAFO, the SSA found that although Alliant offered several proposal strengths--Alliant's BAFO received [DELETED]--Alliant's BAFO did not fully meet the requirements of the [DELETED] element of the [DELETED] subfactor of the [DELETED] factor (for which element Alliant's BAFO received a [DELETED] rating). Also, the SSA determined that Alliant's BAFO presented [DELETED] than Martin Marietta's, largely because Alliant had chosen to use BEI as its source for [DELETED]. In the SSA's view, Alliant's proposed [DELETED] did not offset BEI's problems and failures under its prior contract. The SSA also found that Alliant's [DELETED].

With respect to Olin's BAFO, the SSA found that Olin's unrealistically low proposed price presented [DELETED]. The SSA accepted the evaluators' conclusion that Olin's proposed price may [DELETED]. The SSA also found that Olin's failure to [DELETED] (for which Olin received a [DELETED] rating) "indicates that [DELETED]."

Accordingly, the SSA concluded that Martin Marietta's higher-rated, higher-priced offer represented the best value to the government. Award was made to Martin Marietta, and these protests followed. Contract performance has been stayed pending our decision in this matter.

ALLIANT PROTEST

Alliant protests that the Army did not conduct meaningful discussions with it because the agency failed to inform Alliant of the evaluated deficiencies in its proposal that resulted in the [DELETED] ratings under the [DELETED] elements. As Alliant points out, these weaknesses were specifically identified by the SSA as discriminators in the cost/technical analysis that resulted in the selection of Martin Marietta's offer for award. Alliant contends that had it been aware that the agency did not believe that Alliant's proposed approach offset the risk presented by BEI's past performance record, it would have fundamentally changed its BAFO, such that [DELETED].

FAR § 15.610(c)(2) requires that a contracting agency "[a]dvice the offeror of deficiencies in its proposal so that the offeror is given an opportunity to satisfy the [g]overnment's requirements." Although discussions need not be all-encompassing, discussions are required to be meaningful; that is, an agency is required to point out weaknesses, excesses, or deficiencies in a proposal unless doing so would result in technical transfusion or technical leveling. FAR § 15.610(c) and (d); E.L.Hamm & Assocs., Inc., B-250932, Feb. 19, 1993, 93-1 CPD ¶ 156. In general, agencies must lead offerors into areas of their proposals that require amplification or correction, Son's Quality Food Co., B-244528.2, Nov. 4, 1991, 91-2 CPD ¶ 424, and discussions should be as specific as practicable considerations will permit. E.L. Hamm & Assocs., Inc., *supra*; Data Preparation, Inc., B-233569, Mar. 24, 1989, 89-1 CPD ¶ 300.

The Army admits that it did not identify notable weaknesses/deficiencies evaluated in Alliant's proposal under the [DELETED] elements. As discussed below, the agency had an obligation to conduct meaningful discussions regarding each of these elements where Alliant's initial proposal received a substandard [DELETED] rating. See Eldyne, Inc., B-250158 *et al.*, Jan. 14, 1993, 93-1 CPD ¶ 430, *recon. denied*, Department of the Navy-Recon., B-250158.4, May 28, 1993, 93-1 CPD ¶ 422; Securigard, Inc., B-249939, Dec. 21, 1992, 93-1 CPD ¶ 362.

With regard to the heavily weighted [DELETED] element, Alliant's initial proposal received a [DELETED] rating overall, as well as for the organization subelement of this element.² While discussions were conducted with Alliant on the subelements of this element that received [DELETED] ratings, no discussions were conducted regarding the weaknesses in the [DELETED] subelement, which received a [DELETED] rating. The primary weaknesses found in the [DELETED] subelement pertained to Alliant's proposed [DELETED]. The record shows clearly the importance of these concerns to the evaluators, a concern which the SSA adopted. In fact, the evaluators specifically noted that "Alliant did not attempt to correct or

²[DELETED].

mitigate" the aforesaid evaluated problems under the [DELETED] subelement in its BAFO, and the SSA expressed specific concern that Alliant had not clarified how its [DELETED] would be successful at its [DELETED]—of course, Alliant was not provided with any opportunity to address these evaluated concerns.³ We find that the agency failed to conduct meaningful discussions in this area.

With regard to the [DELETED] factor, the Army and Martin Marietta argue that the Army was not required to discuss the evaluated proposal weaknesses because, under the color rating definition applicable to the [DELETED], a [DELETED] rating is something less than a deficiency. Martin Marietta also argues that, as indicated by Alliant's proposal and BAFO, Alliant was already aware of BEI's past performance problems and therefore the agency had no obligation to identify evaluated proposal weaknesses that related to BEI's past performance, and that, in any event, BEI's past performance record was historical and could not be changed by discussions.

We do not agree with the Army and Martin Marietta that the agency had no obligation to discuss the weaknesses evaluated in Alliant's proposal under the [DELETED] factor. Despite the parties' characterization of the [DELETED] color rating for the [DELETED] factor as not signifying a "deficiency" that required discussions, the record shows, as Alliant asserts, that BEI's past performance problems were considered a significant weakness by the evaluators and the SSA. The Competition in Contracting Act of 1984 and FAR require that procuring agencies identify all weaknesses, deficiencies or excesses in proposals necessary for an offeror to have a reasonable chance of being selected for award. 10 U.S.C. § 2305(b)(4) (1994); FAR § 15.610; Price Waterhouse, B-222562, Aug. 18, 1986, 86-2 CPD ¶ 190. An agency may not avoid this obligation by labeling significant weaknesses as something less than a deficiency. See, e.g., American Dev. Corp., B-251876.4, July 12, 1993, 93-2 CPD ¶ 49; Eldyne, Inc., supra, recon. denied, Department of the Navy-Recon., supra (the procuring agency was required to discuss weaknesses that had a significant impact on the protester's proposal's technical rating, even though the weaknesses were not labeled deficiencies and did not result in the protester's proposal being considered unacceptable).

We also do not agree with the Army's and Martin Marietta's characterization of the evaluated [DELETED] factor weaknesses in Alliant's proposal as involving merely historical information that could not be changed and which was not required to be mentioned during discussions. See Teledyne Brown Eng'g, B-258078; B-258078.2, Dec. 6, 1994, 94-2 CPD ¶ 223; JCI Envtl. Servs., B-250752.3, Apr. 7, 1993, 93-1 CPD ¶ 299 (cited by Martin Marietta) ("ordinarily, a contracting agency is not required to

³As a result of the discussions on the other subelements, Alliant's submitted revisions which resulted in [DELETED] ratings for these subelements. Alliant received a [DELETED] rating for the [DELETED] subelement.

obtain an offeror's comments concerning past performance information which, as here, involves matters of historical information, not subject to change").

As recognized in the agency's contemporaneous evaluation documentation, the agency did not have significant concerns under this factor regarding Alliant itself,⁴ which proposed an approach which offered BEI's expertise and capabilities as a [DELETED], while attempting to offset BEI's past performance problems through Alliant's [DELETED]. Alliant's proposed [DELETED] for its subcontractor's past performance could have been changed or explained in response to discussions, e.g., by [DELETED], which as discussed further below Alliant states it would do had it been aware that proposing BEI as a subcontractor/team member was such a critical concern to the Army that it effectively offset other proposal strengths in the evaluation and source selection.⁵ Thus, the agency's serious concerns about Alliant's proposing of BEI should have been the subject of discussions. See, e.g., E.L. Hamm & Assocs., Inc., supra (agency should have discussed its evaluated concern with the experience of the protester's proposed site manager, where the protester could improve its proposal by explanation or substitution of a more experienced site manager).

Martin Marietta argues, however, that discussions concerning the agency's evaluation of Alliant's proposal under the [DELETED] factor were not necessary because Alliant was already aware that BEI had performance problems under the prior contract. Alliant's knowledge that BEI had performance problems under the prior contract does not abrogate the agency's obligation to inform Alliant of its serious concerns regarding BEI's involvement in the Alliant "team." In this respect, an offeror could reasonably expect during discussions to be apprised of evaluated deficiencies in its subcontractors' past performance that significantly impact the offeror's evaluation standing, particularly given the express requirement in the RFP that offerors provide written consent from their subcontractors to allow the agency to discuss the subcontractor's past performance evaluation with the offeror. Absent meaningful discussions on this point, Alliant could justifiably believe that the agency was satisfied with the firm's proposal in this regard and was deprived of the opportunity to revise its proposal so as to have a chance to satisfy the government's requirements and concerns. See National Medical Staffing, Inc.; RP/Health Care

⁴Months after the protests and agency reports were filed, the agency raised questions regarding Alliant's past performance [DELETED] that were not adversely commented on in the contemporaneous past performance evaluation documentation, even though they could have been if there were perceived [DELETED] problems. Alliant has persuasively responded that these [DELETED] were not relevant and/or do not indicate questionable or poor past performance.

⁵The Army also identified Alliant's failure to [DELETED], as a weakness under the [DELETED] element. This weakness was also not mentioned during discussions

Professionals, 70 Comp. Gen. 505 (1991), 91-1 CPD ¶ 486; Price Waterhouse, B-254492.2, Feb. 16, 1994, 94-1 CPD ¶ 168.

The Army and Martin Marietta argue, in the alternative, that Alliant was not prejudiced, even assuming meaningful discussions were not conducted on the factors and elements discussed above.

Competitive prejudice is an essential element of every viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379. Where an agency violates procurement requirements, a reasonable possibility of prejudice is a sufficient basis for sustaining a protest, and we will resolve any doubts concerning the prejudicial effect of the agency's action in favor of the protester. Foundation Health Fed. Servs., Inc.; QualMed, Inc., B-254397.4 *et al.*, Dec. 20, 1993, 94-1 CPD ¶ 3; The Jonathan Corp.; Metro Mach. Corp., B-251698.3; B-251698.4, May 17, 1993, 93-2 CPD ¶ 174, *aff'd*, Moon Eng'g Co., Inc.-Recon., B-251698.6, Oct. 19, 1993, 93-2 CPD ¶ 233. Where, as here, an impropriety in the conduct of discussions is found, it must be clear from the record the protester was not prejudiced in order to deny the protest. National Medical Staffing, Inc., B-259402; B-259402.2, Mar. 24, 1995, 95-1 CPD ¶ 163; Ashland Sales & Serv., Inc., B-255159, Feb. 14, 1994, 94-1 CPD ¶ 108. Here, the record establishes a reasonable possibility of prejudice.

Regarding Alliant's rating under the [DELETED] element, the agency and interested party argue that Alliant has not specifically shown what information it would have provided if it were given the opportunity to address the agency's concerns, and Alliant has not demonstrated that it could have raised its [DELETED] rating for this element, even if it received discussions. The agency's evaluation conclusions under this element, however, are protected under the General Accounting Office protective order issued in this case and were not presented to Alliant.⁶ The Army and Martin Marietta opposed releasing this information from the protective order, and Alliant's counsel has been unable to confer with its client regarding how Alliant would respond to these evaluated weaknesses in a revised proposal. The record contains sufficient evidence that Alliant's proposal could be improved with respect to the evaluated weaknesses (e.g., by proposing changes to Alliant's [DELETED]),⁷ and since Alliant has not had access to the agency's evaluation to more specifically respond to the agency's concerns, we believe that there is a reasonable possibility

⁶The agency's evaluation conclusions for the [DELETED] elements were released from the protective order to allow Alliant's counsel to share this information with their client. The [DELETED] element information was not so released.

⁷As noted above, the evaluators and SSA specifically noted Alliant's failure to address in its BAFO the agency's evaluated concerns in this area, which were not mentioned during discussions.

that Alliant was prejudiced by the Army's failure to conduct meaningful discussions. See IRT Corp., B-246991, Apr. 22, 1992, 92-1 CPD ¶ 378.

Alliant was also prejudiced with regard to the Army's failure to conduct meaningful discussions concerning Alliant's past performance evaluation that was graded [DELETED] under the [DELETED] elements, primarily because of BEI's past performance on the prior HYDRA-70 contract. Alliant states in several affidavits that had the firm been aware that the Army had concerns regarding Alliant's use of BEI as a subcontractor, Alliant would have [DELETED]. Specifically, Alliant states that [DELETED]. These promised actions would appear to address the past performance concerns expressed by the SSA in his source selection decision.

The Army argues, from its review of Alliant's arguments and affidavits in support of its protest, that even if Alliant changed [DELETED] as described, Alliant's overall past performance rating would not improve and Alliant's other ratings would be reduced. In this regard, the Army primarily complains that the documentation reviewed lacks sufficient detail to credit Alliant's proposal, e.g., the proposal does not specifically [DELETED], and that this lack of detail would warrant even lower performance risk and other ratings. The Army also speculates that [DELETED] may adversely affect Alliant's other ratings that resulted from BEI's strengths, e.g., [DELETED].

We are not persuaded by the agency's post hoc selection statement.⁸ Alliant's protest arguments outlining how Alliant could respond to the agency's concerns are not an adequate substitute for the opportunity to submit a revised proposal in accordance with the proposal preparation instructions, which presumably should contain the required details and address how Alliant's revised arrangement would affect the other evaluation areas. Thus, we do not share the Army's belief that it can predict with relative certainty the impact of meaningful discussions in this case.⁹ See Pan Am Support Servs., Inc.-Recon., 66 Comp. Gen. 457 (1987), 87-1

⁸While we consider the record, including statements and arguments made in response to a protest, in determining whether an agency's selection decision is supportable, we accord greater weight to contemporaneous source selection materials rather than documents which were prepared in response to protest contentions. DynCorp., 71 Comp. Gen. 129 (1991), 91-2 CPD ¶ 575.

⁹Martin Marietta also argued that Alliant's statement that it would [DELETED] was already reflected in Alliant's BAFO and therefore Alliant was not prejudiced by any lack of discussions regarding BEI. It is true that Alliant, in its cover letter to its BAFO, stated that Alliant [DELETED]. The Army reasonably did not consider the [DELETED], which was not provided to the agency during the competition, in the agency's technical evaluation of Alliant's BAFO because Alliant did not submit

(continued...)

CPD ¶ 512; American Dev. Corp., supra.

In sum, the Army failed to conduct meaningful discussions with Alliant. The record establishes a reasonable possibility that Alliant was prejudiced, particularly given the closeness of the competition, which evaluated both Alliant's and Martin Marietta's BAFOs as [DELETED] overall, and Alliant's \$[DELETED] million price advantage. We sustain Alliant's protest on this basis.

OLIN PROTEST

Olin protests that the agency failed to conduct meaningful discussions with it concerning the Army's determination that Olin's proposed price was unsupported and unrealistically low.¹⁰ Olin complains that the agency misled it during the face-to-face discussions when the agency informed Olin that its prices for certain [DELETED] appeared unrealistic, but then refused to inform Olin as to whether the agency meant unrealistically high or unrealistically low; Olin states that it believed the agency was informing it that its prices were unrealistically high and [DELETED].

The Army admits that it refused to inform Olin whether its comment that Olin's prices appeared unrealistic meant that these prices were considered to be too high or too low. The Army and Martin Marietta argue, however, that the cost discussions, when considered as a whole, reasonably informed Olin that its proposed prices were considered unrealistically low. We agree.

The record shows that Olin was informed by the Army that the agency believed that Olin's prices for the [DELETED], which were the ones identified by the Army as being unrealistically priced, did not appear to contain all required cost elements; for example, [DELETED]. Because Olin was informed that it did not appear to the Army that Olin had included all required costs in its prices, the agency's comment that the agency viewed Olin's prices as being unrealistic could reasonably only mean that the agency viewed the prices as unrealistically low. Thus, although the

⁹(...continued)

change pages in its BAFO altering [DELETED] in its initial proposal. Alliant states that the [DELETED]; Alliant contends that had it known of the Army's evaluation concerns regarding BEI, [DELETED]. Thus, Alliant has not had the opportunity to revise its proposal in this area.

¹⁰Olin also protested that the agency did not afford the firm meaningful discussions regarding certain evaluated weaknesses in Olin's technical proposal. Because the Army responded to these allegations in detail in its agency report, and Olin did not address the agency's response in its comments, we consider these allegations to have been abandoned. See TM Sys., Inc., B-228220, Dec. 10, 1987, 87-2 CPD ¶ 573.

Army's discussions should have been more specific regarding the agency's view of the overall realism of Olin's prices,¹¹ the discussions Olin received in this regard, considered as a whole, were meaningful and not misleading. See Marine Animal Prods. Int'l, Inc., B-247150.2, July 13, 1992, 92-2 CPD ¶ 16.

Olin also argues that the agency misled it during discussions when it indicated to Olin that it need only provide cost data for material items and/or subcontracts totaling \$10 million or more. The record shows that after the face-to-face discussions, but prior to the close of discussions, Olin asked the agency for clarification regarding the submission of cost data for subcontracts. In response, the agency directed Olin to the transcripts of the face-to-face discussions, in which the Army had informed Olin that "[DELETED]." In its BAFO, Olin failed to [DELETED], but only provided cost data for material items and subcontracts in excess of \$10 million.

While Olin contends that the agency's discussions reasonably informed it that the Army only sought cost data in its BAFO for material items and/or subcontracts in excess of \$10 million, the RFP proposal instructions, as noted, clearly required detailed cost and pricing data supporting each cost element of the offered prices. Since the agency's request for BAFOs instructed offerors to comply with the solicitation proposal format instructions, Olin's failure to present cost data in support of [DELETED] was inconsistent with the solicitation's instructions and prevented the agency from adequately assessing the realism of Olin's proposed price as was contemplated under the RFP evaluation scheme. Thus, the discussions on this point were also not misleading.¹²

Olin next protests the evaluation of its technical proposal, complaining that its BAFO unreasonably received [DELETED] ratings under the [DELETED] elements of

¹¹The Army argues that it could not be more specific as to whether it viewed Olin's prices as unrealistically high or low because to do so would improperly inform Olin of the relative price standing of its offer. We fail to see how answering Olin's question as to how the Army viewed the realism of Olin's prices for its own proposed approach indicates Olin's price standing as compared to the other offerors.

¹²Olin also argues that the agency did not identify during discussions the Army's concern that Olin [DELETED]. The Army's conclusion in this regard was made in response to Olin's BAFO price reduction and no further discussions were conducted with the offerors. An agency is not obligated to reopen negotiations so that an offeror may remedy defects introduced in a BAFO. Ferranti Int'l Defense Sys., Inc., B-237555, Feb. 27, 1990, 90-1 CPD ¶ 239.

the [DELETED]subfactor.¹³ Olin asserts that it only had one minor deficiency under each of these elements and should have been rated [DELETED]. In this regard, Olin asserts that Martin Marietta's offer was rated [DELETED] under these elements, despite being evaluated as containing a number of weaknesses.

In reviewing a protest challenging an agency's technical evaluation, we examine the record to ensure that the agency's evaluation was reasonable and consistent with the stated evaluation criteria. See Abt Assocs. Inc., B-237060.2, Feb. 26, 1990, 90-1 CPD ¶ 223. We find no basis from our review of the record to question the agency's evaluation of Olin's or Martin Marietta's proposals under these elements.

The SSRB report shows that Olin's BAFO was rated [DELETED] under the [DELETED] element for a number of weaknesses in addition to the one identified by Olin in its protest.¹⁴ For example, the Army also determined that Olin had [DELETED]. Martin Marietta's BAFO, on the other hand, was evaluated as [DELETED] because, although the agency evaluated some weaknesses and risks in Martin Marietta's proposal, the evaluators and the SSA concluded that Martin Marietta, among other things, had demonstrated a thorough understanding of the requirements for [DELETED] and had provided a [DELETED] that offset the evaluated weaknesses and risks.

Olin's BAFO was also rated [DELETED] under the [DELETED] element because, among other things, Olin's required [DELETED], although this was a specific RFP requirement, or [DELETED]. Olin concedes that these are legitimate weaknesses in its proposal, but argues that they were relatively minor and did not warrant a [DELETED] rating for this element. We see no basis to question this rating, in that a [DELETED] rating was defined by the agency's source selection plan to reflect that an offer "addresses requirements with an intent to meet but requires discussion/clarification and/or minor correction," and Olin's offer did not address a specific statement of work requirement in its [DELETED] plan.

Olin argues, however, that Martin Marietta's offer was also evaluated as containing a weakness under the [DELETED] element, but received a [DELETED] rating. While it is true that the Army found that Martin Marietta's BAFO did not address a relevant [DELETED] under this element, the Army also noted that Martin Marietta's proposal had demonstrated a thorough understanding of the scope of the

¹³Olin also complains that the Army did not evaluate two videotapes and a test report Olin submitted to demonstrate their pre-production evaluation efforts. The record shows that the agency appropriately did not evaluate the videotapes and test report because they were submitted to the agency outside the competition in this procurement and were treated as marketing efforts rather than a proposal effort.

¹⁴[DELETED].

[DELETED] effort; had identified [DELETED], and had proven ability to [DELETED]. We see no basis on the record to question the agency's [DELETED] evaluation rating for Martin Marietta's proposal under this element.

Olin also protests the agency's deletion of a contract line item for the M261 multipurpose submunition, high explosive warhead from the RFP after the receipt of BAFOs.¹⁵ The Army responds that after the evaluation of BAFOs it learned that it had insufficient funds to award this line item and the cost of this line item was de minimis in relation to the total contract price. We do not object to the agency's failure to award this line item because the record establishes that no offeror was prejudiced thereby. In this regard, the RFP incorporated the "Contract Award--Alternate III" clause set forth at FAR § 52.215-16, which informed offerors that the government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations, which was not the case here. While Olin argues that it could have offered different suppliers if it had known that the Army would not award this line item, it has not explained how this would affect the evaluation of its proposal, and we fail to see from the record how the deletion of this line item had any affect on the agency's source selection. See E.W. Bliss Co., B-255648.3, Apr. 26, 1994, 94-1 CPD ¶ 280.

Olin finally challenges the SSA's selection of Martin Marietta's proposal over that of Olin, arguing that the SSA did not reasonably determine that Martin Marietta's higher evaluation ratings were worth the \$[DELETED] million premium. We find that the SSA's selection of Martin Marietta's higher-rated, higher-priced offer over Olin's lower-rated, lower-priced offer to be reasonable, based on the BAFOs received.

The SSA specifically considered Olin's low proposed price, but found that it was unrealistically low and [DELETED]. As discussed above, Olin's BAFO [DELETED], without providing the documentation required by the RFP to establish the realism of its cost reduction. While Olin challenges the agency's determination that Olin [DELETED], Olin has not shown that the agency's determinations--that Olin's low BAFO price was unrealistically low, undocumented, and thus represented a performance risk--were unreasonable, based on the BAFO received. See Newport News Shipbuilding and Drydock Co.; Ingalls Shipbuilding, Inc., B-254969 et al., Feb. 1, 1994, 94-1 CPD ¶ 198.

The SSA also considered the technical merits of Martin Marietta's offer vis-a-vis Olin's. As described above, Martin Marietta's offer was found superior to those of both Olin and Alliant, in part, because Martin Marietta's offer was the only one that was evaluated as being [DELETED]. In this regard, the SSA considered Olin's failure to satisfy the [DELETED] element, for which Olin's BAFO was rated

¹⁵ Alliant also protested this issue.

[DELETED], to be indicative of [DELETED]. Martin Marietta's ratings under the [DELETED] factor were also found to reflect [DELETED] than Olin. We find the SSA reasonably concluded, consistent with the RFP's stated evaluation scheme, that Martin Marietta's evaluated technical superiority and lower [DELETED] outweighed Olin's lower, but unrealistic, proposed price.

We sustain Alliant's protest and deny Olin's protest.

We recommend that the Army reopen negotiations, conduct meaningful discussions with all the competitive range offerors, request revised proposals, and make a new source selection decision. If a firm other than Martin Marietta is selected for award, the Army should terminate the award to Martin Marietta and make award to that other firm. We also find that Alliant is entitled to recover its reasonable costs of filing and pursuing the protest, including reasonable attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1995). Alliant should submit its certified claim for protest costs directly to the agency within 60 days of receiving this decision. 4 C.F.R. § 21.6(f)(1).

Comptroller General
of the United States